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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 686

IRVING TAITEL, RUTH TAITEL, and JEROME TAITEL, d b a I. TAITEL & SON, a Partnership,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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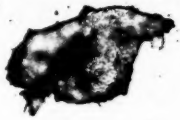
To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Irving Taitel, Ruth Taitel and Jerome Taitel, doing business as I. Taitel and Son, a Partnership, respectfully prays that a writ of certiorari be issued out of and under the seal of this Court to review the decision



of the United States Court of Appeals for the Seventh Circuit, rendered October 30, 1958, which granted the petition of the National Labor Relations Board for enforcement of its order.

JURISDICTION

Jurisdiction to review this case upon writ of certiorari is conferred upon this Court by 28 U.S.C. Sec. 1254(1).

OPINIONS BELOW

The National Labor Relations Board's decision and order are reported at 119 N.L.R.B. No. 124.

The opinion of the United States Court of Appeals for the Seventh Circuit, filed October 30, 1958 (Rehearing denied without opinion, December 22, 1958), has not yet been reported, but is printed in the Appendix.

QUESTIONS PRESENTED

1. Is the lower court's opinion in conflict with the decisions of this Court and other Courts of Appeals in upholding the National Labor Relations Board's ruling that the petitioner was guilty of interference in violation of Section 8(a)(1) of the Labor Management Relations Act?

2. Is the lower court's failure to consider the petitioner's disavowal and promise not to retaliate against members of the Union a violation of the Fifth Amendment in denying the petitioner due process of law?

STATUTES INVOLVED

Labor Management Relations Act, 29 U.S.C. Sec. 158 (a)1 and 5, printed in the appendix at p. 23.

Amendment V of the Constitution of the United States printed in the appendix at p. 23.

STATEMENT OF THE CASE

Charges were filed by the Union against I. Taitel & Son, the petitioner here, claiming that the petitioner had interfered with the rights of the petitioner's employees in violation of Section 8(a)1 and 5 of the Labor Management Relations Act (61 Stat. 136, 29 U.S.C., Sec. 151, et seq.) by threatening to close the plant if the Union organized it, promising one of the leaders of the Union a promotion if he dropped the Union, soliciting assistance of employees to combat the Union, coercive questioning of its employees about the Union, and soliciting employees to abandon the strike and return to work, and that the petitioner had refused to recognize the charging Union as the sole representative of the petitioner's employees when it had been selected by a majority of the employees in the appropriate unit. After a hearing lasting five days, the Trial Examiner upheld the charges in the complaint, and on appeal to the NLRB the Board confirmed the Trial Examiner's findings and recommended order. The General Counsel petitioned the United States Court of Appeals for the Seventh Circuit to enforce the Board's order. That Court heard oral argument on October 9, 1958, and rendered its decision October 30, 1958, which is printed in the appendix at p. 16. A petition for rehearing was filed and denied.

The petitioner is a partnership composed of Irving Taitel, Ruth Taitel and Jerome Taitel, and is engaged in the business of manufacturing men's work clothes, in plants located at Knox and Scottsburg, Indiana; Selma, Alabama, and Drew, Mississippi. It formerly operated a fifth plant at Berne, Indiana, and since this cause began

has closed one of its southern plants, in order to give greater strength to the Knox plant, the plant here involved. Work trousers are manufactured at Knox.

The petitioner has on many occasions during the last several years discussed with its employees the unfavorable economic conditions, the losses it was suffering and the difficulty of keeping the plant open. On March 13, 1956, the Union representatives came in and asked the petitioner for recognition on its cards. As Mr. Irving Taitel, the senior partner, who has charge of labor matters was away, on a selling trip, he was contacted and returned the next day. As he went through the plant on March 14, 1956, he talked with many of the employees about working conditions and the economic difficulties of the petitioner. Three days later, on March 17, 1956, the petitioner, represented by Mr. Irving Taitel, the plant manager and its attorney met with a Union committee, composed of eight employees, and four other representatives. At that time, Mr. Taitel and the attorney denied and disavowed any threats to close the plant or discharge any employees because of union membership and activities, and assured the Union that if the Union was chosen by the employees, the petitioner would bargain with it and would not close down because the employees voted for the Union. At the same time, the parties were unable to agree on an election, as the petitioner believed there had been coercion used in obtaining signed cards, and felt that the Board should hold a hearing and order an election. Immediately after the meeting adjourned, the petitioner's attorney prepared a statement of the petitioner's position, as expressed at the meeting, and a reiteration that the petitioner would not discriminate against or discharge any employees who joined the Union or engaged in union activities; and that it would not close down the

plant if the employees voted for the Union, but would recognize it and bargain with it. This statement was printed as an advertisement in the two newspapers in their next issue. On March 19, 1956, the employees went out on strike until April 10, 1956, when they returned. Soon after the strike began, the petitioner endeavored to resume operations, and sought to persuade some of its employees to return to work. All returned on April 10, 1956, without discrimination. On that day, the petitioner printed a second advertisement reaffirming its disavowal and promise of no reprisal.

SPECIFICATION OF ERRORS TO BE URGED

The United States Court of Appeals for the Seventh Circuit erred in affirming the decision of the National Labor Relations Board, in holding in conflict with this Court that the petitioner was guilty of interference in violation of Sec. 8(a)1 of the Labor Management Relations Act, 29 U.S.C. Sec. 151, et seq.

The United States Court of Appeals for the Seventh Circuit denied the petitioner due process of law in affirming the decision of the National Labor Relations Board that the petitioner was guilty of interference in violation of the Labor Management Relations Act.

BASIS FOR FEDERAL JURISDICTION

This is a case involving a conflict between the Court of Appeals for the 7th Circuit and the decisions of this Court, and the decisions of the First, Fourth and Sixth Courts of Appeals, as well as the constitutional question of due process. This is a suit appealed under the jurisdiction of 28 U.S.C. Sec. 1254(1).

REASONS RELIED ON FOR GRANTING THE WRIT

This is an important question before this Court, whether this Court was right, in holding that an employer, apparently guilty of interfering with his employees' rights as to union activities, by making threats of reprisal, but who recognizes his error, and publishes to his employees his disavowal and his promise not to engage in reprisal against them because of their activities, is able by such disavowal and promise to clear the atmosphere so that the employees are free to engage in such activities without fear. The lower court in effect said that there is no place of penitence, by ignoring the disavowal, but this Court recognized that such a frank statement disavowing any threats does give the employees that necessary freedom. In this particular situation, the acts occurred on March 14, 1956, and three days later, the employer clearly disclaimed any intent to intimidate. There was no discharge or discriminatory conduct in the case.

The second point involves the important question of whether the petitioner was accorded due process of law in the conduct of the lower tribunals in ignoring, while not rejecting for valid reasons, the important evidence of the petitioner's disavowal and promise of no reprisal, published to his employees, as to their union activities.

1. The petitioner's senior partner, Mr. Irving Taitel, upon his return to the plant in Knox, Indiana, on March 14, 1956, having been advised that the Union claimed to represent a majority of the employees, talked with his employees as he went over the plant. It was alleged that he engaged in interference, in violation of Sec. 8(a)1 of the Labor Management Relations Act, by threatening to close down the plant, if the Union organized it, promising

one of the leaders of the Union a promotion if he dropped the Union, soliciting the assistance of employees to combat the Union, coercive questioning of the employees about the Union, and soliciting employees to abandon the strike and return to work. This last act would only be an unfair labor practice if the other acts constituted interference. Three days later, the petitioner met with the Union committee, and discussed recognition and an election. At that time Mr. Taitel and the petitioner's attorney disavowed any threats as to the union membership or union organization and assured the employees that if the Union were chosen by the employees, the petitioner would recognize it and deal with it. After the meeting, the petitioner's attorney prepared a statement as to the petitioner's position, seeking to incorporate the sense of what had been stated at the meeting. Whether or not it did fully do this, it was a clear, unambiguous statement of intent to remain neutral, to the extent of allowing the employees freely to decide for themselves their union association. This statement (printed in respondent below's appendix, Exhibit 1) was then published in the next issues of both of the local papers, as a paid advertisement, and distributed to the employees then on strike. Virtually all of the employees who testified, amounting to a majority of the employees, stated that they had seen the statement and had read it. On April 10, 1956, the petitioner printed a reaffirmation of its disavowal and promise of no reprisal. (Printed in respondent below's appendix Exhibit No. 2.)

In the Trial Examiner's Report there was no mention of any disavowal or promise of no reprisal being made either at the meeting of March 17, 1956, or in the published statements. The Trial Examiner had the right to appraise or evaluate the statement. He might have stated he did not believe the petitioner or its attorney had made such

statements, or that he did not believe it was published as contended, although it would be a little fantastic so to state, such an unquestioned fact conceded by all the witnesses, but he did not. No, the Trial Examiner chose to ignore this statement, but he referred to an explanation it contained, as to the petitioner's refusal to agree to an election as an "afterthought," since there was some dispute as to what the representatives of the petitioner had stated at the meeting, that it refused to agree to an election, because the Union made threats to and coerced the employees to force them to join the Union, but he disregarded the existence of any disavowal.

The National Labor Relations Board, in affirming the Trial Examiner's Report, similarly brushed off such an important statement published by the petitioner without comment.

The Court of Appeals at the oral argument questioned the parties as to their understanding of the effect of such disavowal and promise, but in its opinion there is no mention of it. Apparently, it took the position that such a disavowal and promise of no retaliation had no significance, since it did not condescend even verbally to brush it aside.

In this, the lower court stands in direct conflict with this Court and at least three Courts of Appeals. The Court of Appeals for the 6th Circuit, in *H. J. Heinz v. NLRB* (1940), 110 F. 2d 843, 847, in which case supervisory employees questioned employees about the Union and disparaged it, said:

> "There was no evidence that petitioner directed any supervisory employee to communicate its alleged neutrality to the employees. If petitioner had really wanted its employees to know that they might with safety join whichever union they desired, the bulletin

> boards were the obvious and because direct, the most effective means of assuring them of its impartiality."

On appeal to this Court (1941), 311 U. S. 514, 521, this Court said:

> "This is the more so here where petitioner, when advised of the participation of his supervisory employees in the organization campaign, took no step, so far as appears, to notify the employees that those activities were unauthorized, or to correct the impression of the employees that support of the Union was not favored by the petitioner and would result in reprisals."

In our case, the petitioner took all the steps necessary to make clear to the employees that they were free to engage in union activities, and that it would not commit any reprisals against them. In the case quoted, the petitioner "took no step," but here the petitioner sought "to correct the impression of the employees that support of the Union was not favored by the petitioner and would result in reprisals," since some of its conduct was alleged to have amounted to improper interference. Posting its position on the bulletin board would not have reached the employees since the plant was on strike the following Monday, so it published its statement in the newspapers and saw that all of the employees had a copy, as well as expressing its position at the Union committee meeting where eight of its employees were present.

The Board and the lower court leaned entirely on cases where there had been alleged interference, but in none of them had the employer disavowed such conduct or published widely to the employees his intent to be neutral or promise of no reprisal, nor was there any contention by the respondents that such had been done. For, as these

cases show, and this Court emphatically expressed, the disavowal and promise of no reprisal made public to the body of employees, was of very important character. Consequently these decisions are based on facts entirely at variance wth the facts of the present case, since this Court considered the disavowal published to the employees of significant moment.

Unfortunately, neither the Board not the lower court followed the guide of the only Board case which we were able to find, where the facts are so close as to these, which clearly follows the pattern of legal thinking in line with this Court's unambiguous decision. In that case, *Mari Knitting, Inc.* (1950), 90 NLRB 479, 480, where threats to close the plant down were made by supervisory officials, if the Union succeeded in organizing the employees, the president of the employer a week later told the employees that this rumor was false, and put a notice on the bulletin board. There the Board held that the statement of the president of the employer that the rumors were false was

> "sufficient to counteract the effect of" (the plant manager's) "coercive statements and assure the employees that they were free to engage in union activities without fear of reprisal."

In *N.L.R.B.* v. *Bird Machine Co.* (1947), 161 F. 2d 586, 591, where disparaging remarks and threats of economic reprisal and loss of privileges were made by supervisory personnel, with regard to union activity, the Court of Appeals for the First Circuit said:

> "Had the employer posted notices to the effect of the instructions given the foremen, or otherwise communicated this information to the employees, the remarks of the foremen might have been shorn of their coercive effect."

Here we have no comment by the Trial Examiner, the Board or the Court of Appeals that the petitioner had failed to make clear his position, that the publication was inadequate, that the disavowal was not specific enough, or that it came too late, none of which of course would be true, but at least would offer an explanation for not accepting it, instead of ignoring it. If this Court thought it important enough, to point out that the failure of the employer to take steps to notify the employees to correct the impression of the employees that support of the Union was not favored, the failure of the Court of Appeals to consider these acts of the petitioner, endeavoring to dissipate and undo any mistakes or excessive concern it had for the survival of its business, lest further economic burdens brought by the Union prove too heavy, was in conflict with this Court and the First, Fourth and Sixth Courts of Appeals.

In *North Carolina Finishing Co. v. N.L.R.B.* (1943), 133 F. 2d 714, 716, where supervisory officials had made anti-union statements, the Court of Appeals for the Fourth Circuit said:

> "The remarks may have been unauthorized by the Company but we must remember that Robertson's instructions to the overseers were never directly communicated to the subordinate employees. Accordingly, the hundreds of employees under the supervision of Boston and Walser could have reasonably believed that the second hands were speaking for the management, and this affords a sufficient basis for liability under the Act."

These decisions demonstrate the conflict between them and the present case, for there this Court and the Courts of Appeals regarded as important the presence or absence of the disavowal and promise of no reprisal from the em-

ployer who previously had erred on the side of interference, and as destroying its coercive effect, while the Court of Appeals for the 7th Circuit did not even consider the petitioner's forthright effort to make clear to its employees that they might participate in union activities and membership without fear of reprisal.

2. In discussing the facts in *H. J. Heinz v. N.L.R.B.* (1941), 311 U. S. 514, 521, where employees had been questioned about the Union, which had been disparaged, this Court indicated that the employer was charged with responsibility for this conduct in view of the employer's failure to take steps to inform the employees that they might with safety join whichever union they desired. The disavowal and promise of no reprisal was therefore clearly important, because as this Court plainly indicates, in view of the absence of such disavowal made public to the employees, the employer stood charged with improper interference. It is an essential matter which must be considered in determining whether the petitioner was guilty of interference. The Trial Examiner as the trier of the facts could clearly appraise the disavowal and promise, and decide that it was defective, or lacking in clarity or not sufficiently broad, or came too late, or was evasive, if such were the facts. However, here the Trial Examiner ignored its existence. There might not have been such a disavowal so far as any references by the lower tribunals are concerned, except for the fact that it is in the exhibits, and its existence is not contested, and the Trial Examiner does mention part of it, dealing with the petitioner's refusal to accept the union designation cards. Obviously, the Trial Examiner did not even consider the disavowal, for such an important circumstance which this Court held was necessary to establish the employer's freedom from interference, and whose lack placed the responsibility for improper conduct upon

the employer, but which was present in this case, could not be brushed aside without comment since its presence changed the character of the alleged conduct. It is like a criminal case where the evidence shows that the victim was shot, and bled profusely, and died, but the evidence fails to mention that his death had no connection with his wound. The Trial Examiner could not presume to act as if this phase were not a part of the case, for when it is such a substantial element, as indicated by this Court and other Courts of Appeals (*N.L.R.B. v. Bird Machine Co.* (1947), 161 2d 586, 591; *North Carolina Finishing Co. v. N.L.R.B.* (1943), 133 F. 2d 714, 716; *H. J. Heinz Co. v. N.L.R.B.* (1940), 110 F. 2d 843, 847), the Trial Examiner must recognize it, and consider it, or the petitioner has been denied "due process of law."

The courts all hold that the term "due process of law" cannot be and should not be closely confined and defined. In each case, the facts must be appraised to determine whether there was due process. There is general agreement as to what it requires. In *Jones v. Board of Comm'rs. Franklin County* (1902), 42 S. E. 144, 149; 130 N. C. 451, 466, the court described it as being:

> "an orderly proceeding, adapted to the nature of the case in which the citizen has an opportunity to be heard, and to defend, enforce and protect his rights."

The court in *In re Bond & Mortgage Guarantee Co.* (1935), 283 N. Y. S. 623, 648, described it clearly, saying,

> " 'Due process of law' requires an orderly proceeding adapted to the nature of the case in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights. A hearing or an opportunity to be heard, is absolutely essential. We cannot conceive of due process of law without this."

From these cases, it is clear that an essential part of due process is the opportunity to be heard. The citizen must have a hearing. A failure to provide a hearing is not due process. However, it is equally clear, as the courts quoted from above indicate, due process of law is not attained merely by a formal hearing, with a chance to be heard. If the tribunal hears the evidence, but ignores it, the hearing has been fruitless. If the evidence is not rejected for essential weaknesses, making it unreliable or unworthy of belief, as it was not rejected in this case, or if it is a minor or insubstantial point, which would not change the result, if it had been considered, as it was not an unimportant matter in this case, but it was obviously ignored, for some reason or no reason, we are not informed, the evidence must be considered and weighed for otherwise there is no due process of law.

In *In re American Rio Grande Land & Irrigation Co.* (1937), 21 F. Supp. 492, 495, the federal district court in Texas said,

> "'due process' * * * includes and means an opportunity to be heard and a resultant action in conformity with the truth deduced at such hearing."

It is therefore plain that in this case, the proceedings lacked due process of law, beginning with the Trial Examiner's report, and the failure of the Board and the lower court to reject the Trial Examiner's finding. Therefore, the petitioner has been denied the protection of the Fifth Amendment by the Board's action in finding the petitioner guilty of a violation of Sec. 8(a)1 of the Labor Management Relations Act.

If we are correct in our contentions as to these two questions, then it must follow that the Board's determination a-

to the violation of Sec. 8(a)5 of the Act must also be set aside.

It is respectfully submitted that there is here presented a proper occasion for the exercise of the supervisory power of this Court to reverse the lower court.

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January 28, 1959.

Certificate of Service

I, Thomas M. Quinn (below signed), one of the attorneys for I. Taitel & Son, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on January 28, 1959, I served a copy of the foregoing Petition for Writ of Certiorari on the respondent, by mailing by first class mail addressed to counsel, Thomas J. McDermott, Associate General Counsel, National Labor Relations Board, Washington 25, D. C.

Thomas M. Quinn.

APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 12335 SEPTEMBER TERM AND SESSION, 1958

NATIONAL LABOR RELATIONS BOARD, *Petitioner*, v. IRVING TAITEL, RUTH TAITEL and JEROME TAITEL d/b/a I. TAITEL AND SON, a Partnership, *Respondent*.	On Petition for Enforcement of an Order of the National Labor Relations Board.

October 30, 1958

Before DUFFY, *Chief Judge*, and HASTINGS, *Circuit Judge*, and WHAM, *District Judge*.

HASTINGS, *Circuit Judge*. This case comes before us upon the petition of the National Labor Relations Board pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C.A. §§ 151 *et seq.*) for

enforcement of its order[1] issued against respondent[2] on December 14, 1957, following the usual proceedings under Section 10 of the Act.

In substance, the Board found that respondent interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act by threats to employees that it would close its plant if the union succeeded in organizing its employees; by offering a supervisory job to an employee if he abandoned his union activities; by unlawful interrogation of employees and solicitation of their assistance to combat the union's efforts to organize the plant; and by the solicitation of employees to abandon a strike, called by the union after respondent had refused to bargain. The Board further determined that the union represented a majority of respondent's employees in the unit found to be appropriate at the time of the alleged violations, and that, in denying the union's request for recognition and insisting upon a Board ordered election, respondent was not motivated by any good faith doubt as to the union's majority status, but was moved by a desire to gain time in which to undermine the union and dissipate its strength, thereby violating Section 8(a)(5) of the Act.

To remedy the foregoing, the Board ordered respondent to cease and desist from the unfair labor practices found and from, in any other manner, interfering with its employees' rights guaranteed in Section 7 of the Act. It affirmatively ordered respondent to bargain collectively with the union upon request to do so and to post the appropriate notices.

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[1] The Board's decision and order are reported at 119 N.L.R.B. No. 124.

[2] Respondent is Irving Taitel, Ruth Taitel and Jerome Taitel d/b/a I. Taitel and Son, a partnership. Respondent is engaged in the manufacture, sale and distribution of trousers and jackets at Knox, Indiana, where the alleged unfair labor practices occurred. It is admitted that respondent is engaged in commerce within the meaning of the Act.

[3] General Teamsters, Chauffeurs and Helpers Union, Local 298, I.B.T. & H. of A.

The contested issue is whether there is substantial evidence in the record as a whole to support the several findings of the Board as above set out.

Since respondent's contentions are predicated solely upon the question of the sufficiency of the evidence on the record as a whole to support the Board's findings, we seem required again to state "that the Act vests in the Board, and not in the courts of review, the duty of appraising conflicting evidence, drawing inferences from established facts and circumstances, and resolving issues of fact," and that our function "is limited to determining whether there was substantial evidence to support the Board's findings of fact," and that if there was then "these findings cannot be disturbed on review." *National Labor Relations Board v. Aintree Corporation*, 7 Cir., 132 F. 2d 469, 472 (1942). We are not, however, to take lightly the warning of Judge Major in his dissenting opinion in that case (at page 473), that, in following such a rule, courts of appeal are not to be mere rubber stamps, there still remaining the necessity for a solid foundation of proof to be found in the record. As Judge Lindley stated in *National Labor Relations Board v. Wagner Iron Works, etc.*, 7 Cir., 220 F. 2d 126, 133, cert. den., 350 U.S. 984 (1955): "Ultimately whether enforcement is to be decreed depends primarily on whether the findings are supported by substantial evidence 'when viewed in the light that the record in its entirety furnishes,'" citing *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 488.

The record fairly and adequately establishes that, during the interval between the union's request for recognition and the first meeting between respondent and the union, and during the progress of the strike following nonrecognition, respondent engaged in the tactics above found by the Board to constitute interference with and restraint and coercion of its employees in their exercise of the rights guaranteed them under Section 7 of the Act. We see no point in burdening this opinion by reciting the testimony which gives rise to our conclusion as to its sufficiency.

This court has held rather decisively that such conduct on the part of an employer is in violation of Section 8(a)(1) of the Act. Threats to close a plant if the union succeeds, *National Labor Relations Board v. Aintree Corporation, supra;* threats of reprisal and promise of benefits for repudiating union, *National Labor Relations Board v. Popeil Brothers*, 7 Cir., 216 F. 2d 66, 67-68 (1954); coercive interrogation of employees as to their union activities and membership, *National Labor Relations Board v. Waquoit Iron Works, etc., supra; Indiana Metal Products Corp. v. National Labor Relations Board*, 7 Cir., 202 F. 2d 613, 619-620 (1953); solicitation of employees to combat the union and to break a strike called for unfair labor practices, *National Labor Relations Board v. Bradley Washfountain Co.*, 7 Cir., 192 F. 2d 144, 152-153 (1951), have all been held to be in violation of Section 8 (a)(1).

The record shows that on the critical date there were 96 employees in the unit for which recognition was sought, making 49 employees a majority. It further shows that employees in the unit executed authorization cards which were identified and introduced in evidence at the hearing. Respondent refused to check the signatures on these cards when requested to do so at its first meeting with the union, and at the hearing it did not contest their genuineness. Respondent did, however, contend that the signed cards reflected a coerced majority because the union waived initiation fees for all employees who joined while the union was being organized and represented it would charge a fee of $25 for those who joined later. A union may be designated as a bargaining representative by the signing of authorization cards, *National Labor Relations Board v. Geigy Co., Inc.*, 9 Cir., 211 F. 2d 553, 556 (1954); *Reliance Mfg Co. v. National Labor Relations Board*, 7 Cir., 125 F. 2d 311, 314-315 (1952); and the waiving of the fees during the organizational period does not smack of coercion but rather of promotional persuasion. The testimony of the employees lends no color to a finding that their signatures were other than voluntary. To be considered also is the fact that a substantial majority of the employees supported the unfair labor practices strike. We hold that

there was substantial evidence to support the Board's finding that, at the time of its request for recognition, the union represented a majority of the employees in an appropriate unit. *National Labor Relations Board* v. *Dahlstrom Metallic Door Co.*, 2 Cir., 112 F. 2d 756 (1940).

Finally, was the refusal of the employer to recognize the union predicated upon a good faith doubt as to the union's majority status, or was it motivated by a desire to gain time to undermine the union and dissipate its strength? Since respondent vigorously contends that there was no substantial evidence that it was acting other than in good faith in seeking a Board ordered election as the alternative to the showing of majority status on the card count, we shall consider the findings made on that proposition.

At the first meeting between respondent and the union when recognition was requested, the record establishes the following: When its majority representation was questioned, the union offered the signed cards for checking and respondent refused. Respondent requested the union to make known its bargaining demands, and the union refused to do so until it was granted recognition, whereupon respondent offered to open its books to show its alleged weak financial condition and inability to meet any demand for pay increases. Respondent demanded a Board ordered election, and the union suggested an election either under state supervision or by supervision of a neutral party and this was rejected. Respondent then rejected an offer to enter into an agreement for a consent election to be conducted by the Board but assigned no reason for insisting on a Board ordered election. The meeting was then ended and two days later the strike for recognition began. The strike was in progress from March 19, 1956 until April 10, 1956 when the employees returned to work. The strike was supported by a majority of the employees in the bargaining unit. On March 20, 1956 respondent for the first time, in a published newspaper advertisement, assigned as its reason for refusing recognition the issue of waiver of payment of union dues. On April 26, 1956 the union

again demanded recognition and requested respondent to bargain, and to this respondent failed to reply. These circumstances, coupled with the unfair labor practices heretofore found to have occurred prior to the first meeting of the parties, afford substantial evidence to support the finding of the Trial Examiner and the Board on this issue adversely to respondent and their conclusion that respondent was in violation of Section 8(a)(5) of the Act. *Franks Bros. Co.* v. *National Labor Relations Board*, 321 U.S. 702 (1944); *National Labor Relations Board* v. *Chicago Apparatus Co.*, 7 Cir., 116 F. 2d 753, 758-759 (1940); *National Labor Relations Board* v. *Clearfield Cheese Co., Inc.*, 3 Cir., 213 F. 2d 70, 74 (1954).

It is clear that "an employer may rightfully withhold recognition from a union possessed of majority status and request an election to confirm its accreditation if there is a *bona fide* doubt of a majority. Where the refusal is merely to afford time to take action to dissipate the majority, it constitutes a violation of the duty to bargain set forth in Section 8(a)(5) of the Act * * * (citations omitted) * * *." *National Labor Relations Board* v. *Epstein*, 3 Cir., 203 F. 2d 482, 484 (1953). In the instant case it should be remembered that most of the actions under review occurred contemporaneously with the union organization campaign. Under such circumstances, respondent's unfair labor practices can hardly be divorced from its attitude of nonrecognition.

The petition of the Board for enforcement of its order is granted, and the Board's order will be enforced.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

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AMENDMENT V.

CONSTITUTION OF THE UNITED STATES

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Labor Management Relations Act

[29 U. S. C. Sec. 158]

"UNFAIR LABOR PRACTICES

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;"

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a)."

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No. 686

In the Supreme Court of the United States

OCTOBER TERM, 1958

IRVING TAITEL, RUTH TAITEL AND JEROME TAITEL, d/b/a I. TAITEL & SON, A PARTNERSHIP, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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In the Supreme Court of the United States

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OPINIONS BELOW

The opinion of the court below (Pet. 17–22) is reported at 261 F. 2d 1. The Board's Decision and Order (B.A. 3–35)[1] are reported at 119 NLRB 910.

JURISDICTION

The decision of the court below was rendered on October 30, 1958. A petition by respondent in the court below for rehearing was denied without opinion December 22, 1958. The decree enforcing the Board's

[1] References designated "B.A." are to the Board's appendix to its brief in the court below.

order was entered on December 31, 1958. The petition for a writ of certiorari was filed on February 6, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Board, in finding that petitioner had engaged in unfair labor practices violative of Section 8(a)(1) and (5) of the National Labor Relations Act, properly discounted petitioner's alleged disavowal of an intent to interfere with its employees' rights under the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151 *et seq.*) are set forth at p. 23 of the Petition.

STATEMENT

A. *The Board's decision and order.*—In late February or early March, 1956, the Union[2] began organizing the employees at petitioner's Knox, Indiana plant (B.A. 50–51). On March 13, 1956, William C. Jenkins, president and business representative of the Union, Thomas Baker, also a business representative of the Union, and a committee of employees went to petitioner's plant for the purpose of seeing partner Irving Taitel (B.A. 26; 39). Irving Taitel was out of the city but the group did see his son and partner, Jerome (B.A. 26; 39). Jenkins told him that a majority of the production and maintenance employees had designated the Union as their collective bargain-

[2] General Teamsters, Chauffeurs and Helpers Union, Local 298, I.B.T. & H. of A.

ing representative and that the Union wanted to be recognized and to negotiate a contract (B.A. 26; 40). The group was told that they would have to talk to Irving Taitel, and, after a telephone call to him in Louisville, Jenkins arranged for the Union committee to meet with Irving Taitel on March 15 in Knox (B.A. 26–27; 39–40, 42).

Taitel returned to Knox, and on March 14, the day following the telephone conversation with Jenkins and the day before the scheduled meeting with the Union, Taitel walked through the plant talking to the individual employees (B.A. 13; 170–171). One of the employees Taitel talked to was Kenneth Ross. Taitel asked, "Kenny, what's this idea you got in getting this union into the plant?" When Ross replied that he was not making enough money, Taitel told him he had a big opportunity in the plant—that he was going to let Ross take over the job of foreman of the cutting room. Ross' reply was that he could not live on opportunity alone. Taitel then said, "Well, how would you like me to close this plant down and put all these poor old women out of work?" Ross answered that the Union was not just his idea but that the other employees wanted it too, just as well as he did (B.A. 13; 59–60). Later that day Taitel again approached Ross and this time said, "I am going to leave it up to you, Kenny, whether you close this factory down and put all these poor old women out of work * * * I am going to leave it all up to you. I'll be back after a while and I want your answer." When Taitel returned, Ross told him, "I am going to stay with the Union." Taitel's only response was,

"Well, this conversation is over with." (B.A. 13–14; 61.)

Another employee approached by Taitel on March 14 was Cletus Brooks who, like other employees, was wearing a Union button. Taitel asked, "What's your trouble?" and Brooks replied, "Not enough wages, no paid vacations, nor paid holidays like other places were getting." Taitel asked if that was all, and Brooks answered in the affirmative. Taitel then said, "Of course, you realize if the union gets in here we will have to close this plant down and have to throw these poor old women out of work." Brooks said, "That's the risk we'll have to take." (B.A. 14; 62–63.)

Also, on March 14, Taitel made approaches to employees Janie Barnett, Edith Johnson and Arthur Beem, and in each instance after commenting on the Union's campaign, noted that if its organizing efforts were successful, he was going to have to shut the plant down (B.A. 15–17; 55, 72–74). In the course of his conversation with Beem, and on the same day while interrogating another employee, Wilson Beauchamp, concerning his Union views, Taitel solicited the assistance of these two employees to combat the Union's efforts to organize the plant (B.A. 16–17; 66–67, 73–74).

Pursuant to the telephone arrangements that had been made, the following day, March 15, Taitel and Plant Manager Lloyd Kepler met with Union representatives Jenkins, Baker, and a committee of employees (B.A. 27; 40–41). On the ground that he could not do anything without the advice of counsel,

Taitel refused to discuss the Union claim that it had a majority of the production and maintenance employees signed as members and that it wanted Taitel to recognize it and negotiate a contract (B.A. 27; 41–42). Therefore, another meeting was scheduled for Saturday, March 17 (B.A. 27; 42). The following day, March 16, Taitel approached employee Johnson, and in the course of a discussion about the Union, Taitel stated that the Union "wasn't coming in over his dead body, and that he would do like [he] did before, work a few days and * * * get out" (B.A. 15–16; 55–56).

On March 17, the Union committee met with Taitel, Kepler, and Taitel's attorney (B.A. 27; 42–43). When the latter questioned the Union's majority status, the Union offered to permit him to check the authenticity of the signed membership application cards. This offer was refused with the statement that petitioner wanted an election by the Board (B.A. 28; 43–44). Jenkins' further suggestion that an election be held under the auspices of the State of Indiana or a neutral person was also rejected (B.A. 28; 44). The Union then proposed that they enter into an agreement for a consent election to be conducted by the Board, but petitioner insisted that if the Union wanted recognition, it would have to petition for an election and go through a formal hearing and all steps attendant upon a Board election (B.A. 28–29; 44–45). Throughout the course of this meeting, petitioner offered no reason for insisting on a formal Board election other than that it was interested in the guaranty of secrecy of ballot (B.A. 30; 44).

When petitioner refused to reconsider its position that the Union prove its majority by a Board election, the meeting ended (B.A. 28; 45).

The following Monday, March 19, the Union began a strike for recognition that continued until April 10 (B.A. 28, 30; 46–47). A substantial majority of the 96 employees in the unit the Union sought to represent supported the strike throughout the three-week period (B.A. 30).

On April 6, while the strike was in progress, Plant Manager Kepler called at the home of employee Bonnie Cole and asked her to return to work. While talking to her, employees Jean Ols and Freda Stacy came in and Kepler asked all three to return to work (B.A. 19; 108, 110–111). Kepler told these employees that; if they did not return to work and Taitel could not get the plant on a paying basis, he would have to close it down (B.A. 19; 108). Kepler added that he did not care if this happened, because he had another job he could take the next day (B.A. 19; 108–109, 111).

Kepler also visited the home of Cletus Brooks during the strike and sought to induce him to return to work and to bring one or two others back with him (B.A. 20; 63–64). Kepler stated that if the strike lasted much longer, he was afraid both he and Brooks would be looking for jobs (B.A. 20; 63–64).

On April 13, after the strike had ended, Kepler, in the presence of employees Donald Hamilton and Wilson Beauchamp, stated that, "if the union comes in the plant is going to close down" (B.A. 20; 69–70).

By letter of April 26, the Union again demanded recognition and requested petitioner to bargain with it

(B.A. 28; 47 (G.C. Ex. 3)). Petitioner made no reply to this letter (B.A. 28; 47).

The Board found that petitioner violated Section 8(a)(1) of the Act by threatening employees with economic reprisals if the Union succeeded; offering a supervisory job to an employee if he abandoned his union activities; interrogating employees as to their union activities and soliciting employees to abandon the strike. The Board also found that on March 17, 1956, and at all times material hereto, the Union represented a majority of petitioner's employees in an appropriate unit. The Board further found that petitioner violated Section 8(a)(5) of the Act by denying the Union's request for recognition and insisting upon a Board-directed election since petitioner was not motivated by any good faith doubt as to the Union's majority status, but rather by a desire, as evidenced by its coercive conduct, to gain time in which to undermine the Union and dissipate its strength (B.A. 4–6).

The Board's order requires petitioner to cease and desist from its unfair labor practices, upon request to bargain with the Union, and to post appropriate notices (B.A. 7–10).

B. *The opinion of the court of appeals.*—The court below upheld the Board's decision as adequately supported by the record and enforced its order in full. (Pet. 17–22.)

ARGUMENT

Petitioner concedes (Pet. 6) that it was "apparently guilty of interfering with his employees' rights as to union activities, by making threats of re-

prisal * * *." It contends, however (Pet. 6–11), that it dissipated the effects of its illegal conduct and hence there was no basis for the Board's remedial order in the instant case because in two newspaper advertisements, dated March 20 and April 10, 1956, it publicly "disavowed" any intent to interfere with its employees' organizational rights under the Act." The short answer to this contention is that petitioner persisted in its coercive conduct not only during the interval between the two advertisements but also after the second one (*supra*, p. 6). Indeed, in its advertisements, petitioner continued in its unlawful refusal to bargain with the Union and insisted upon a Board election even though, as the Board and the court below found, petitioner did not entertain a good faith doubt of the Union's representative status (Pet. 22). In these circumstances, there was no reason for the Board to give weight to the alleged disavowals which petitioner's contemporaneous misconduct belied.[4] It was for the Board to determine how the effects of unfair labor practices should be remedied. *Franks Bros. Co.* v. *National Labor Relations Board*, 321 U.S. 702, 704.

---

[3] The advertisements, in substance, stated that petitioner would recognize the Union if it won a Board election; that it "has not and will not interfere" with the employees' right to join or form a union; and that it might not be able to continue in business if the union placed "any additional economic burdens on it." (App. to Pet. Br. in court below, pp. 1A–4A).

[4] The cases relied on by petitioner (Pet. 10–11) do not hold otherwise. They deal with the employer's duty, if he is to avoid being charged with engaging in unfair labor practices, to take appropriate steps when necessary to dispel any impression among his employees that coercive remarks made by supervisory personnel represent the views of management.

Petitioner's second point (Pet. 12–14), that there was a denial of due process by reason of the fact that the Board and the court below "ignored" its published disavowal of unlawful intent, is in effect a mere restatement in constitutional terms of its first argument. If the Board was justified in discounting the petitioner's avowals, as it clearly was, no constitutional right was impaired by reason of the form in which it put its findings. And, of course, there was no obligation on the court below to make specific reference to an argument which it must have considered insubstantial.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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Solicitor General.

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MARCH, 1959.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 686

IRVING TAITEL, RUTH TAITEL and JEROME TAITEL, d b a I. TAITEL & SON, a Partnership,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF OF PETITIONER

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CITATIONS

Cases

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North Carolina Finishing Co. v. N.L.R.B. (1943), 133 F. 2d 714, 716 3

Statute

Labor Management Relations Act, 61 Stat. 136, 28 U. S. C. 151, *et seq.* 1

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF OF PETITIONER

ARGUMENT

In its Brief, the Board reviews all of the interference in violation of Sec. 8(a)1 of the L. M. R. A. charged against the petitioner. Except for the two incidents in which the plant manager tried to persuade the employees to return to work, and the alleged incident about the sign, all occurred within three days before March 17, 1956, the day when the union and the employer met,

prays this Court grant rehearing of its order of March 23, 1959, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Seventh Circuit, in the above entitled case as prayed for in the petition filed, January 28, 1959, herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

The petitioner believes that the question of "due process" raised below needs clarification, as it was considered most briefly in the petition: (*Hickman v. Taylor*, 327 U. S. 808, 328 U. S. 876, 329 U. S. 495.) The petitioner's contention was that a substantial part of the evidence was ignored and disregarded by the tribunals below, and this failure to consider the very important evidence denied the petitioner "due process." It was conceded that if the tribunals had weighed the evidence of the petitioner's disavowal and its promise not to engage in reprisal, if the employees joined the union or engaged in union activity, and found it evasive, or untimely or ineffective, supposing the evidence had supported such conclusions, the petitioner would have no grounds to claim a denial of due process, since the evidence had been heard, considered and weighed. The comment of the New York Supreme Court in *New York State Labor Relations Board v. Greif Realty Corp.* (1947), 70 N. Y. S. 2d 288, at p. 293, seems most pertinent, where it said:

> "Findings of fact in support of decisions by courts and administrative bodies alike serve to give assurance to parties concerned that the decisions are based upon evidence of record and were not reached arbitrarily or influenced by extra-legal considerations."

Although the decision was later reversed, this statement is basic. Obviously, if the evidence is heard, but is not considered and weighed, the fact that it was heard means nothing, as its presence in the testimony has not entered into the judgment and decision.

In *Donnelly Garment Co. v. N.L.R.B.* (1945), 151 F. 2d 854, where the respondent had been charged with sponsoring an inside union, and the respondent sought to introduce evidence that the union had been independently formed, the Board had refused to admit such evidence, and on the second hearing ordered by the Court of Appeals for the 8th Circuit, had indicated that the evidence was immaterial and worthless. The Court of Appeals said at page 872:

> "It is our understanding that, when an employer is charged with an unfair labor practice which he denies having committed, the Constitution of the United States guarantees him a fair trial of the issue; that one of the requirements of a fair trial is that any evidence which is competent and material shall be received and considered, and that the strength of the testimony against him has no bearing upon the admissibility of his testimony or his right fully to present his defense."

In this case the Board and the court below had not even bothered to reject the evidence, but had ignored it. The Court of Appeals said further in the above case at page 875:

> "We think that it would be inappropriate to consider the adequacy of the evidentiary basis for the Board's order at this time and upon this record. We have no right to assume that if the Board had received and considered all of the competent and material evidence proffered by the Company and the plant union, it

> would have made the same findings and order. We cannot avoid the conclusion that, in the absence of the rejected testimony, the record presents an incomplete picture."

That is the present situation, for the Trial Examiner's Report "presents an incomplete picture" since there is no consideration and determination of a substantial part of the evidence, the disavowal. The Court refers to receiving evidence and its being "considered," in both of the above quotations indicating that a fair trial requires that the evidence be both received and considered. The petitioner's position so far as the lower tribunals are concerned is the same as if the evidence was never admitted, or certainly as if it had been rejected without any consideration.

In the New York Supreme Court case above quoted, *New York State Labor Board v. Greif Realty Corp.* (1947), 76 N. Y. S. 2d. 288, where the Board had refused to read the evidence, the court also said at p. 293:

> "The decisions are replete with language supporting the view that the findings of an administrative body must have support in the evidence; yet, if the Board itself, in making such findings, failed to read the evidence, it must follow that the conclusion arrived at was arbitrary, . . ."

In *N.L.R.B. v. Pittsburgh Steamship Co.* (1949), 337 U. S. 656, where the respondent claimed bias and improper conduct by the Trial Examiner because all of the Board testimony was credited, and all of the respondent's testimony was discredited, this Court said, at pp. 659-660:

> "Thus in the determination of litigated facts, the testimony of one who has been found unreliable as to one issue may properly be accorded little weight as to

the next. Accordingly, total rejection of an opposed view cannot of itself impugn the integrity or incompetence of a trier of fact. The gist of the matter has been put well by the Court of Appeals for the 5th Circuit, speaking through Judge Hutcheson, in granting enforcement of an NLRB order; 'The fact alone . . . of which respondent makes so much, that Examiner and Board uniformly credited the Board's witnesses and as uniformly discredited those of the respondent, though the Board's witnesses were few and the respondent's witnesses were many, would not furnish a basis for a finding by us that such a bias or partiality existed and therefore the hearings were unfair. Unless the credited evidence . . . carries its own death wound, that is, is incredible and therefore, cannot in law, be credited, and the discredited evidence . . . carries its own irrefutable truth, that is, is of such nature that it cannot in law be discredited, we cannot determine that to credit the one and discredit the other is evidence of bias.'"

In our present case, the petitioner disavowed any threats of interference and promised not to impose reprisal upon those who joined the union if the union won. This disavowal was first made at the meeting of the petitioner and the union on March 17, 1956. The petitioner reduced its disavowal to writing and had it printed in the local newspapers in their next editions. It was proclaimed for a three days after the first alleged interference, and was published in the next issues, and was distributed to the employees. At no time was this disavowal attacked as meaning anything other than what it said, either by the General Counsel or the union, yet the tribunals below did not mention this disavowal. This published disavowal was received into evidence, and its existence was indirectly acknowledged by the Trial Examiner, in referring to another part of the published statement. Therefore, this

evidence, which was given by the petitioner carried "its own irrefutable truth," and as this Court said, it corrected "the impression of the employees that support of the union was not favored by the petitioner and would result in reprisals." Since neither the Trial Examiner nor the Board questioned its authenticity or its character in any way, and consequently, being evidence bearing "its own irrefutable truth," the Trial Examiner and the Board could not reject it for what it was, a disavowal and a promise not to engage in reprisals.

In *N.L.R.B. v. Pittsburgh Steamship Co.* (1949), 337 U. S. 656, quoted above, this Court has indicated the value of such evidence, which has not been attacked. Paraphrasing the last sentence above, we find this Court's purpose is most pertinent here.

"Since the discredited evidence (ignored evidence) carries its own irrefutable truth (as this does), that is, is of such nature that it cannot in law be discredited (as is the present case), we cannot fail to determine that to credit the one and discredit the other is an evidence of bias." That is, the petitioner was denied "due process."

We should also note what this Court said with regard to what constitutes a "hearing" in order to assure the parties "due process." In *Morgan v. U. S.* (1936), 298 U. S. 468, this Court said, at pages 480-1:

> "The requirement of a 'full hearing' has obvious reference to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts. The 'hearing' is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action."

This the petitioner believes was denied it, by the failure of the Trial Examiner, the Board and the lower court to consider the evidence. This Court continued:

> "If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given."

In other words, the petitioner has been denied "due process" in the order against it.

We feel that the final quotation in the petition for writ of certiorari should be repeated here, from *In re American Rio Grande Land & Irrigation Co.* (1937), 21 F. Supp. 492, 495, where the federal district court in Texas said:

> "'Due process' . . . includes and means an opportunity to be heard and a resultant action in conformity with the truth deduced at such hearing.'"

In the present state of the evidence, the truth is that the petitioner published its disavowal for the benefit of all the employees. Therefore due process means a resultant action in conformity with the fact of disavowal, which this Court declared in *H. J. Heinz v. N.L.R.B.* (1941), 311 U. S. 514, 521, to require such disavowal lest the employer be bound by such interference. Since there was no resultant action in conformity with the truth of disavowal, the petitioner has been denied "due process" of law, under the Fifth Amendment, and its rights violated.

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that the rehearing be granted and that upon such rehearing, a writ of

certiorari issue to the Court of Appeals for the Seventh Circuit.

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Attorneys for Petitioner.

April 2, 1959.

CERTIFICATE OF SERVICE

I, Thomas M. Quinn (below signed), one of the attorneys for I. Taitel & Son, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court, and I hereby certify that on April 2, 1959, I served a copy of the foregoing Petition for Rehearing of Order Denying Petition for Writ of Certiorari on the respondent, by mailing first class mail addressed to counsel, J. Lee Rankin, Solicitor General of the United States, Department of Justice, Washington 25, D. C., and the General Counsel, National Labor Relations Board, Washington 25, D. C.

Thomas M. Quinn.